***THE HON'BLE Mr. JUSTICE L.NARASIMHA REDDY**

W.P.Nos.17503 & 19150 of 2005

% 07.10.2005

Between:

Pernendu Kumar Sharma,

Secunderabad and another

…Petitioners

A n d

The N.T.R. University of Health Sciences,

Vijayawada and others

…Respondents

! COUNSEL FOR THE PETITIOENRS: MR. V. Jagapathi &

MR. K. Ram Reddy

^ COUNSEL FOR THE RESPONDENTS:

Mr.D.V.Nagarjuna Babu, S.C. for N.T.R. University of Health Sciences, G.P. for Home,

G.P. for Medical and Health,

Mr.K. Rathangapani, and

Mr.S. Niranjan Reddy

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> Head Note:

? CITATIONS:

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

W.P.Nos.17503 of 2005

Dated 07-10-2005

Between:

Pernendu Kumar Sharma,

Secunderabad

…Petitioner

A n d

The N.T.R. University of Health Sciences,

Vijayawada and others

…Respondents

-

W.P.No.19150 of 2005

Between:

S. Nirmal,

Secunderabad

…Petitioner

A n d

The Director, Sainik Welfare,

Govt. of Andhra Pradesh, Hyderabad

and others

…Respondents

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

W.P.Nos.17503 & 19150 of 2005

COMMON JUDGMENT:

The subject-matter of these writ petitions is similar. Hence, they are disposed of through a common judgment.

2. Petitioner in W.P.No.17503 of 2005 is the son of an Ex-serviceman. He appeared in the EAMCET-2005, with a view to secure admission in the First Year of M.B.B.S. Course, for the academic year 2005-06. He secured the rank of 11372. He was not selected in the usual course. The Government reserved 1% of the seats, in the said course, in favour of Children of Armed Personnel (CAP). Petitioner made a claim for a seat under that category. In fact, he was considered for admission, under that category, in the previous academic year, and was offered a seat in the First Year of B.D.S Course. Since his intention was to secure admission in M.B.B.S. Course, he tried even in this academic year.

3. In accordance with the procedure prescribed under the relevant provisions, the cases of candidates, claiming seats under CAP category, were referred to the Team, constituted by the State Sainik Welfare Board. The father of the petitioner was registered with the Zilla Sainik Welfare Officer, Muzaffarpur, Bihar. The officials of the State Sainik Welfare Board treated the petitioner as not eligible for admission against a CAP category of seats, on the ground that he is not a local candidate. The action of the respondents is challenged in this writ

petition.

4. The case of the petitioner in W.P.No.19150 of 2005 is almost similar, except for minor details. His father retired from Madras Regiment, and was registered with the Zilla Sainik Board, Thanjavur. Thereafter, he was employed in South Central Railways, and is working at Secunderabad. The petitioner appeared in the entrance examination and secured the rank of 2193. Since he was not selected in the main stream, he submitted an application for being considered against the seats reserved for CAP category. His case also was rejected, by the Committee of Officers, constituted by the State Sainik Welfare Board. Therefore, the University of Health Sciences did not admit him. Hence he filed the writ petition.

5. Petitioners contend that the respondents are not justified in rejecting their claims on the sole ground that their parents were registered with the Sainik Welfare Boards, outside the State of Andhra Pradesh. They plead that they have appeared in both the qualifying and the entrance examinations in the State of Andhra Pradesh, and that their respective fathers, undisputedly, are
Ex-servicemen. It is their contention that there is nothing in the rules, which prohibits consideration of the cases of children of
Ex-servicemen, who are registered with Sainik Welfare Offices in other States.

6. The case is mainly contested by the office of the Director of Sainik Welfare, A.P. Separate counter affidavits have been filed in both the writ petitions. It is stated that the benefit of reservation of seats, in favour of CAP, is meant to be extended to such of the Armed Personnel, who have worked in the State of A.P., for five years, or Ex-servicemen, who have registered themselves with the Zilla Sainik Welfare Offices, within the State. Referring to the various circulars and clarifications issued by the Central Government, it is urged that unless the registration is transferred to any District, within the State of A.P., the petitioners cannot be extended the benefit.

7. Sri V. Jagapathi, learned counsel for the petitioner in W.P.17503 of 2005, submits that the stand taken by the respondents is untenable in law. He contends that the very fact that the case of the petitioner was considered in the previous academic year and was allotted a seat in B.D.S., tells upon the untenability of the interpretation placed by the respondents, on the relevant provisions. He submits that there is no provision in the admission rules, which restricts the consideration of the cases against a seat reserved for CAP category, only to those, who are registered with the Zilla Sainik Boards, within the State. Learned counsel points out that the orders and circulars relied upon, by the respondents are mainly in the context of providing employment, and even in such cases, no hard and fast rule was laid, to disentitle an Ex-serviceman, from being considered for any benefit, on the sole ground that he is not registered with the Sainik Boards, within the State.

8 . Supplementing the arguments of Sri V.Jagapathi, Sri K.Ram Reddy, learned counsel appearing in W.P.19150 of 2005, contended that the respondents have deviated from the procedure, which they have been following all through, and there is no basis for the same. He submits that there are instances, where, even the rule of minimum period of residence, was relaxed by the Government, by issuing G.Os. He points out that the group of the officers of the Directorate of Sainik Welfare, have acted in an arbitrary and discriminatory manner.

9 . Learned Government Pleader for Home, appearing for Directorate of Sainik Welfare, submits that the benefits, *such as*
post-retirement employment, provision of house-sites, reservation of seats for their children etc., in favour of Ex-servicemen, are meant to be extended to such of those, who are registered with the Sainik Welfare Offices, within the State. He contends that the seats reserved in favour of CAP category are not available for
Ex-servicemen, all over the country; irrespective of the places they have registered themselves. He submits that the circulars issued from time to time, by the

Government of India, are very clear to the effect that the benefit is available to only those Ex-servicemen, who are registered with the District or State Agencies.

10. Sri D.V.Nagarjuna Babu, learned Standing Counsel for the N.T.R University of Health Sciences, submits that the matter of certification of the eligibility of candidates under CAP category is entrusted to the group of officers, nominated by the Director of Sainik Welfare, and that the University has hardly any say in the matter. He contends that a reading of the admission rules clearly discloses that the registration with the Sainik Welfare Offices, within the State, is treated as one of the most important factors, and once the record discloses that the respective fathers of the petitioners, got themselves registered, at places outside the State, the petitioners are not entitled to be considered against that category of seats.

11. The N.T.R. University of Health Sciences issued prospectus for admission into First Year of M.BB.S and B.D.S Courses for the current academic year. Apart from providing reservations in favour of different categories, such as, those, in favour of SC, ST, the local candidates, women, physically handicapped etc., the University reserved 1% of the seats, in the said Course, in favour of Children of Armed Personnel, under Clause 7.4. The provision requires that the Armed Personnel or Ex-servicemen must have been residing for a minimum period of five years in the State of A.P., to enable their children to seek admission against the said category. Priorities were also prescribed. Children of Armed Personnel, killed in action, are placed in the highest priority, followed by those, who are permanently disabled in action, recipients of gallantry awards. The 4th priority is almost residuary in nature. The term Ex-servicemen is also defined under the said provision.

12. Before proceeding to discuss the matter, on the eligibility of the petitioners, against this category, one aspect needs to be clarified. An endorsement was made by the 1st respondent to the effect that the petitioners are not local. Arguments were advanced to the effect that the petitioners answer the description of local area.

13. In exercise of power conferred on him, under Article 371 of the Constitution of India, the President of India, issued a notification dividing the State of Andhra Pradesh into three local areas, for the purpose of public employment and admissions into educational institutions. The definitions of local area and local candidates, contained in the said notification; are reproduced in Clauses 7.9 and 7.10, respectively, of the prospectus. A local candidate is the one, who has studied for four consecutive academic years, ending with the year in which he appeared in the relevant qualifying examination, with reference to the local area. The State is divided into three local areas, viz., Osmania University, Andhra University and Sri Venkateswara University, and the districts, comprised in the respective areas, are also mentioned in the definition. The connotation of the expression, local area, used by the 1st respondent, vis-à-vis the petitioners herein, has absolutely nothing to do with the said definition. There is absolutely no doubt that the petitioners answer the description of local candidate, as defined under Clause 7.10. The question before the 1st respondent was in a different context, *viz*. whether the Ex-servicemen can be treated as those belonging to the State of Andhra Pradesh.

14. In the context of present controversy, the following provisions contained in the prospectus are relevant:

Clause-7.4.1:

f. Children of Servicemen and ex-servicemen residing in the state of AP seeking admission shall, in support of the claim, submit a residence certificate issued by MRO from where the candidate is claiming the residence of the parent.

g. The candidate should also submit a certificate from the Zilla Sainik Welfare Officer of the Zilla Sainik Welfare Board as to their eligibility to consider under Army/Ex-Army reservation, specifying the category to which the applicant belongs with attested copies of documentary evidence for the claim. (proformas appended to the application form).

h. Applications of the candidates submitted for the reservation under Servicemen and Ex-servicemen quota shall be scrutinised by the Andhra Pradesh Sainik Board or its nominee and their decision is final and binding on the candidate."

Clause-7.4.2: The children of ex-servicemen are directed to bring the following original certificates at the time of counselling.

1. Original discharge certificate of his/her parent.
2. Original Identity Card of his/her parent issued by Zilla Sainik Welfare Officer of the concerned district.
3. Original Pension book of his/her parent if pensioner.
4. Residential Certificates of the parent of the candidate issued by the Mandal Revenue Officer.
5. Certificates of Gallantry Award, Gazette notification, copies of part-II order and relevant documents if claims under Priority-I, Priority-II and Priority-III.
6. Children of Armed Force Personnel Certificate issued by Zilla Sainik Welfare Officer."

The remaining part of Clause 7.4 deals with the children of serving solders. Under clause 7.5, it is indicated that the claims against this category are to be verified and certified by the Director of Sainik Welfare, Government of Andhra Pradesh, the 1st respondent in W.P.No.19150 of 2005. From a perusal of the above provisions, it becomes evident that, in the context of children of Ex-servicemen, identity card issued by the Zilla Sainik Welfare Officer of the concerned District is one of the important documents, apart from the certificate of residence. At a time, when the claims for seats under this category were not so serious, and the number of aspirants for these seats were very limited, much attention was not paid, as to the requirement of registration with Zilla Sainik Board, or the definition of Ex-servicemen, etc. As and how the competition increased, the minute aspects, touching upon eligibility, started surfacing. The very fact that the petitioner in W.P.No.17503 of 2005 was found suitable in the previous academic year, but was held not eligible during the current academic year; reflects this aspect.

15. It is a matter of record that the Ex-servicemen in both these cases are registered

in the Sainik Welfare Office in Muzaffarpur of Bihar State and Thanjavur of Tamil Nadu State, respectively.

16. The registration of Armed Force Personnel with State or Zilla Sainik Boards at the time of their discharge, has got its own significance. Such registration enables them to seek the benefit of further employment, extension of other benefits etc. A similar question arose, in the Krishna District, in the context of extension of benefit to an Ex-serviceman, who was not registered with Zilla Sainik Welfare Office. The Government of India, Ministry of Defence, Directorate General of Resettlement, conducts the census of

Ex-servicemen and their widows. The clarification issued by them on 21-01-1992 discloses that, apart from holding an identity card, an Ex-serviceman must be domicile of a particular area. This aspect has been further elaborated by them, in their letter dated 13-01-1994. It reads as under:

> 1. A number of instances of Ex.servicemen not in possession of valid ex.servicemen Identity Card issued by Rajya/Zilla Sainik Boards, sponsored for employment/self-Employment projects have come to the notice of this Directorate. It will be desirable to insist on production of valid Identity Card issued by Rajya/Zilla Sainik Boards whenever any ex-serviceman approaches them for availing any benefit and concession.
>
> 2. It has, therefore, been decided that no ex-servicemen may be registered or sponsored for employment/self-employment projects unless he is in possession of valid Identity card issued by the respective Rajya/Zilla Sainik Boards. The ex-servicemen not in possession of valid Identity card, may be advised to first get registered for issue of Identity card. This may kindly also be brought to the notice of all Zilla Sainik Boards in your charge for their strict compliance."

In the manual of procedure for registration and other related matters, the competent authority indicated as under:

> "**Para 14**: Ex.servicemen who could not follow the above procedure, for some reason or the other can register themselves by presenting their Discharge Certificates and other documents in person at the Zilla Sainik Board serving their area of residence. Before registering, the Zilla Sainik Board is to satisfy itself that the applicant is a bona fide ex-serviceman and is not registered with any Sainik Board."

17. Transfer of registration from one Sainik Welfare Office to another, is also not a matter of course. The Adjutant General Branch of Army Headquarters issued a circular on 7-7-1988, directing that, any application, seeking transfer or change of registration, must enclose the supporting documents, duly verified by the existing Sainik Boards, with whom they are registered, and the new Sainik Boards, to whom they seek transfer. It was stated that whenever such applications are made, the claim shall be verified and the transfers or changes shall be effected.

18. If it were to be a case where registration at any place in India, would enable an Ex.servicemen to claim benefit in the rest of the country, the necessity for transfer or proving nativity, domicile etc., would not have arisen. The first sentence in the 1st paragraph of the circular dated 13-01-1994 issued by the Directorate General of Resettlement, makes it clear, beyond any pale of doubt, that it is only the persons, who are registered with the respective State or District Sainik Boards, that are entitled to the benefits, provided within that region. When such are the clear instructions and directions, the question of extension of the benefit of reservation in favour of CAP category to the Children of Ex-servicemen, registered at a place outside the State; does not arise. Learned counsel for the parties are not able to place any material, to convince this Court, to ignore the circulars, orders and clarifications, issued by the authorities of the Defence Ministry, which are referred to, or extracted above.

19. Therefore, this Court does not find any basis to grant any relief to the writ petitioners. The writ petitions are accordingly dismissed. There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt. 07 -10-2005.

Note:

L.R. copy to be marked.

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